(5)

(1)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

SINGLE BENCH **WRIT PETITION NO. 57 OF 2006**

PETITIONER : Smt. N.N. Ishaque, aged about 38 years, wife of Shri Salim Ishaque, Lecturer in English, Posted at Government Higher Secondary School, Chaitma, District Korba (C.G.)

3608/06 3607/06 3606/06
P.R. No. Presented by Shri Parveen Pandey
dated 14/12/06

VERSUS

RESPONDENTS

1. State of Chhattisgarh,
   Through: The Secretary, Schedule Caste and Schedule Tribe Development Department, D.K.S. Bhawan Raipur (C.G.)
2. The Commissioner, Tribal Development Department, Raipur (C.G.)
3. The Collector,
   Korba District Korba (C.G.)
4. The Assistant Commissioner, Tribal Development Department, District Korba (C.G.)
5. The Principal,
   Government Higher Secondary School, Chaitma, District Korba (C.G.)

RECEIVED-COPY
14/12/06
CLERK to A. G. BILASPUR

(6)

(2)

6. Smt. Kavita Bajpayee, Government Higher Secondary School Narhardeo Kanker, District kanker (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI ETC. OR DIRECTION/ORDER IN THE LIKE NATURE ETC.

(476) (47)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 3540/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

19.7.2006

W.P. Nos. 3523/2006, 3524/2006, 3525/2006, 3526/2006, 3527/2006, 3528/2006, 3529/2006, 3530/2006, 3531/2006, 3533/2006, 3534/2006, 3539/2006, 3540/2006, 3541/2006, 3542/2006, 3543/2006, 3544/2006, 3545/2006, 3546/2006, 3547/2006.

Shri Rajesh Pandey, Advocate for the petitioners.

Shri Sumesh Bajaj, Government Advocate for the respondents/State on advance copy.

Heard.

The main grievance raised by the petitioners is common and common issue is involved in these petitions, therefore, they are being disposed of by this common order.

By these petitions, the petitioners, who are working as Lecturer in various Higher Secondary Schools of the District Korba of State of Chhattisgarh, have questioned the legality & correctness of their transfer order dated 7.7.2006 (Annexure P-1) issued under the signature of Under Secretary, Government of Chhattisgarh, Scheduled Caste & Scheduled Tribe Development Department, Raipur.

The grounds of challenge of this order, as raised by the petitioners, are that the Secretary or the Under Secretary has no jurisdiction to pass the impugned transfer order, as the Counselling

P.T.O.

(46)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Committee is empowered to issue transfer orders under the Rationalization Scheme dated 1.6.2006, therefore, the impugned transfer order issued by respondent No.1 is without jurisdiction and nullity in the eyes of law. The State Government has already delegated the powers of transferring the teachers to counselling committee constituted at the State level under the rationalization scheme dated 1.6.2006 and the impugned transfer order has been issued in flagrant violation of the provisions contained in Paras 5 & 6 of this rationalization scheme.

Perusal of impugned order Annexure P-1 whereby the petitioners have been transferred as also the rationalization scheme dated 1.6.2006 shows that the petitions are misconceived, for the reasons that the impugned order under which the petitioners have been transferred has been passed on administrative grounds. This order has not been passed under the rationalization scheme dated 1.6.2006 and the same has been passed by the Government in exercise of general powers to transfer its employees.

Perusal of rationalization scheme dated 1.6.2006 shows that where on account of transfers, promotions & retirements the numbers of teachers have become irrational in various schools looking to the numbers of students i.e. where on account of above mentioned reasons in one school numbers of teachers have become less 1 or 2 or where

P.T.O.

(49)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the numbers of teachers have exceeded more than the required numbers of teachers, in that case the concerned department, as envisaged in the scheme, will constitute a counselling committee and after collecting information from the various higher secondary schools or middle schools or primary schools, the concerned committee shall rationalize the numbers of teachers in each schools looking to the numbers of students. It has been envisaged that the committee is to ensure that in no primary school remain less than two teachers, in case of middle school not less than three teachers, in case of high school not less than four teachers and in case of higher secondary school not less than six teachers.

As has been mentioned earlier that the impugned order has been passed under the administrative powers of the Government on administrative grounds and this order has nothing to do with the rationalization scheme dated 1.6.2006. The Government is always empowered to transfer its employees and the introduction of rationalization scheme does not create any bar that the concerned department of the State Government is not empowered to transfer its teachers in the administrative exigency or in the public interest. Moreover, a bare perusal of the petitions shows that it has not been mentioned in the petitions that by these transfers in a particular higher secondary school numbers of teachers has become less than

P.T.O.

(60)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the required numbers of teachers or numbers of teachers have exceeded looking to the numbers of students. Therefore, the petitions of the petitioners are not maintainable for the reasons that;

(1) the order impugned has been passed under the general powers of the Government to transfer its employees on administrative ground and it has not been passed under the said scheme i.e. rationalization scheme dated 1.6.2006.

(2) in the petitions it has not been alleged that on account of these transfers the principle enunciated in the rationalization scheme has been violated i.e. on account of these transfers the numbers of teachers have become less than the required numbers of teachers under the rationalization scheme or have exceeded in any particular school contrary to the rationalization scheme.

(3) The areas of operation of the rationalization scheme dated 1.6.2006 and of general powers of transfer of State Government are different.

However, if any such instance comes to the notice of the petitioners, then they will be at liberty to make a representation to the authority concerned.

In view of the above, the petitions stand dismissed.
Consequently, M.(W.)P. for grant of stay also stands dismissed.

Sd/-
L.C. Bhadoo
Judge

Roshan/-

P.T.O.